

Appl. No. 10/736,863

Remarks:

In the Office Action dated October 8, 2008, the Examiner rejected claims 29, 30, 32, 34-36, 38, 40-44 and 46-49 under 35 U.S.C. 103(a) as being unpatentable over Osypka (US 6,738,674) in view of Huepenbecker et al. (US 6,289,251). Applicants traverse this rejection for the reasons set forth below. Applicants have also amended independent claims 29, 35 and 41 to more clearly distinguish over the cited art and put this case in better condition for appeal if necessary.

Specifically, the independent claims have been amended to recite that the tether comprises a polymeric cord. Support for this amendment may be found, for example, in the specification at paragraph 31, 2nd sentence, which states in part: *"Elongate connector 30 may comprise a tether that is flexible and fatigue resistant such as a braided cord of a high strength biocompatible polymer such as polyester, polypropylene, or polyethylene . . ."* (emphasis added).

In the Office Action, the Examiner takes the position that lead 14 in Osypka is a tether. Although Applicants recognize that under MPEP §2111.01 the USPTO must give claims their broadest reasonable interpretation in light of the specification, Applicants have difficulty agreeing that the Osypka lead is a tether. In a prior Amendment, Applicants tried to lend clarity to what was meant by tether by adding the "tied by a knot" language, recognizing that a lead cannot be tied in a knot and still be functional, whereas a tether could be. To no avail, the Examiner maintains the position that Osypka's lead is a tether.

However, in the spirit of cooperation, Applicants have, by this Amendment, added further clarifying language to recite that the tether comprises a polymeric cord. The On-line Merriam Webster Dictionary (www.merriam-webster.com/dictionary) defines cord as "1 a: a long slender

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flexible material usually consisting of several strands (as of thread or yarn) woven or twisted together b: the hangman's rope". Clearly the Osypka lead is not the same as a tether comprising a polymeric cord.

MPEP §2111.01 also requires that that words of the claim must be given their plain meaning unless the plain meaning is inconsistent with the specification. In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); *Chef America, Inc. v. Lamb-Weston, Inc.*, 358 F.3d 1371, 1372, 69 USPQ2d 1857 (Fed. Cir. 2004) (Ordinary, simple English words whose meaning is clear and unquestionable, absent any indication that their use in a particular context changes their meaning, are construed to mean exactly what they say). Applicants submit that the plain meaning of a tether comprising a polymeric cord is not anticipated by the Osypka lead.

With regard to the combination of Osypka with Huepenbecker, Applicants submit that modifying Osypka as suggested is contrary to the teachings of Osypka, regardless of what secondary reference is used to suggest tying something in a knot. The Osypka lead 14 comprises a conductor coil 43 inside lumen 40, allegedly defined by an outer jacket, although Applicants see neither where Osypka describes an outer jacket in the specification, nor where Osypka describes a jacket that is polymeric. Nevertheless, Applicants assume the Examiner is referring to the inner lead 14 as a whole or the outer jacket alone as the tether, since the conductor coil is clearly not polymeric as required by the claims. Applicants submit that tying the lead 14 (or outer jacket) of Osypka would result in a large knot (at least 2X diameter) that would not meet the size requirements stated at column 5, lines 34-57, making it difficult or impossible to navigate the inner lead 14 through the outer lead 12, and making it difficult or impossible to navigate the inner lead 14 through the vasculature. For at least these reasons, Applicants submit

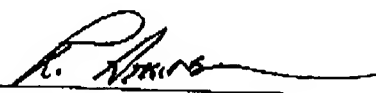
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that tying the Osypka lead 14 into a knot is contrary to Osypka's teaching and a knot would render the lead inoperable.

Reconsideration and allowance of all pending claims is respectfully requested. Any inquiry regarding this matter may be directed to the undersigned representative at (612) 226-3874.

Respectfully submitted,
Atkinson et al.
By their attorney,

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